

### **Remarks**

Claims 1-20 have been canceled herein without prejudice or disclaimer.

Applicants reserve the right to pursue the subject matter encompassed by the canceled claims in one or more continuing applications. Upon entry of this amendment, claims and 21-74 will be pending. Claims 27-29, 40, 48-50, 54, 62, 64-66, and 73 have been amended. Applicants' amendments are fully supported by the specification and original claims and do not introduce any new matter. Claim 54 was previously indicated as allowed, and it depended on claim 45, which in turn depended on claim 42. Claim 54 has been amended such that it depends directly from claim 42. Claims 21-26, 30-33, 35-39, 41-47, 51-54, 57-61, and 63 were previously indicated as allowed.

Applicants wish to thank the Examiner for granting the telephone interview with Applicants' representatives on June 28, 2004 in which the outstanding rejections were discussed.

#### **I. Rejection of Claims 27, 48, 66, and 68-74 under 35 U.S.C. § 112, First Paragraph**

Claims 27, 48, 66 and 68-74 were rejected under 35 U.S.C. § 112, first paragraph, as introducing new matter. Applicants respectfully disagree.

Claim 68 was rejected as lacking support in the application for an antibody obtained from an animal immunized with a polypeptide fragment of SEQ ID NO:1 of about 10 to about 20 amino acids (or about 40 to about 50, or about 70 to about 90, or about 100 to about 113 amino acids). Applicants respectfully disagree.

The specification teaches the claimed fragments, and the use of the claimed fragments to immunize an animal to make antibodies against the claimed fragments. *See* specification page 27, lines 14-19 (specific polypeptide fragments), and page 45, lines 25-31 (antibodies generated by direct injection of fragments). Therefore, the invention of claim 68 does not introduce new matter. Accordingly, Applicants respectfully request that rejection of claim 68, and claims 69-74 which are dependent thereon, be reconsidered and withdrawn.

Claims 27, 48 and 66, have been amended as suggested by Examiner Huynh in the telephonic interview. Applicants respectfully submit that the amendments to the claims overcome this rejection.

## **II. Rejection of Claims 27-29, 34, 40, 48-50, 55-56, 62, and 64-67 under 35 U.S.C. § 112, Second Paragraph**

Claims 27-29, 34, 40, 48-50, 55-56, 62 and 64-67 have been rejected under 35 U.S.C. 112, second paragraph as indefinite. Applicants respectfully traverse.

Although Applicants maintain that the claims were not indefinite as previously pending, in the interest of furthering prosecution, Applicants have amended claims 27-29, 40, 48-50, 62, and 64-66 as suggested by the Examiner during the telephone interview of June 28, 2004. Applicants respectfully submit that these amendments do not change the scope of claims 27-29, 40, 48-50, 62, 65, and 66. Examiner Huynh indicated that claims 34, 55-56, and 67 need not be amended. Applicants respectfully request that the rejection of claims 27, 48, 64, 66 and 67 under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

With respect to claims 28-29, 34, 40, 49, 50, 55, 56, 62, and 65, the Examiner alleges that the language "or a fragment of a polyclonal antibody" (claims 28, 34, 49, and 55) and "or a fragment of a monoclonal antibody" (claims 29, 40, 50, 56, 62, and 65) is "ambiguous because it is not clear if is the binding fragment or the Fc fragment of the antibody is being claimed." Paper No. 05032004, page 4, 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs. Applicants respectfully disagree.

Claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *See*, M.P.E.P. § 2111.01 at 2100-47 (8<sup>th</sup> edition, Revision 1, Feb. 2003) *citing*, *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). The term "plain meaning" means that the words must be read as they would be interpreted by those of ordinary skill in the art. *See*, M.P.E.P. § 2111.01 at 2100-48 (8<sup>th</sup> edition, Revision 1, Feb. 2003), *citing* *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) and *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999).

The independent claims from which the rejected claims depend, i.e., claims 21 and 42, both recite in the preamble, "An isolated antibody or fragment thereof that specifically binds to a protein selected from the group consisting of..." Applicants submit that one of ordinary skill in the art, upon reading this preamble, would understand the term "antibody fragment" which "specifically binds to a protein" to refer to an antibody fragment

containing the complementarity determining regions (CDR) of an antibody molecule. Additionally, Applicants' specification describes antibodies and fragments of antibodies that bind the polypeptide of the present invention, including, for example, Fab fragments. *See* specification page 46, lines 22-24.

Because the term "antibody fragment" that "specifically binds" has a definite meaning to one of ordinary skill in the art, and Applicants' specification discloses antibody fragments, the claims are not indefinite. Applicants therefore respectfully submit that claims 28-29, 34, 40, 49, 50, 55, 56, 62, and 65 distinctly claim the subject matter Applicants regard as their invention. Accordingly, Applicants respectfully request that rejection of these claims under 35 U.S.C. § 112, second paragraph be reconsidered and withdrawn.

### Conclusion

In view of the foregoing amendments and remarks, Applicants believe that this application is now in condition for allowance. An early notice to that effect is urged. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicants would expedite allowance of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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